HONOURABLE SRI JUSTICE P. S. NARAYANA

WRIT PETITION No.16924 OF 2006

DATE: 16-10-2006

Between:

Smt. Bandi Syamala, W/o. Naga Satyanarayana,
aged about 38 years, R/o.Mulaupparagudem,
Kalidindi Mandal, Krishna District.

.. Petitioner

AND

The State Election Commission,
Rep. by its Secretary
Buddha Bhavan, 3rd Floor, M.G. Road,
Secunderabad & two others

.. Respondents

ORDER:

This Court ordered notice before admission on 04-09-2006. Respondent No.3 filed counter affidavit.

Heard the learned counsel representing the writ petitioner Sri D. Srinivas and the learned counsel representing the respondents Sri V.V. Prabhakara Rao.

The Writ Petition is filed for a Writ of *Mandamus* declaring the action of the respondents in not taking steps for conducting re-poll in Malaupparagudem Gram Panchayat, Kalidindi Mandal, Krishna District as illegal, arbitrary and in violation of the rules issued by respondent No.1 and consequently direct the respondents not to declare the results till conducting of re-poll to

Malaupparagudem Gram Panchayat, Kalidindi Mandal, Krishna District and pass suitable orders.

It is stated that petitioner is a resident of Malaupparagudem Gram Panchayat and for the purpose of conducting panchayat elections, it is divided into 12 wards. Out of 12 wards, 3 wards were declared unanimously in favour of the petitioner's supporters. For remaining 9 wards, elections were conducted. Out of 9 wards for which election was conducted, 7 wards were won by the petitioner's supporters. The elections to the Malauparagudem Gram Panchayat is scheduled to be held on 06-08-2006 i.e., third phase of election schedule as per notification. The petitioner having zeal to serve public, submitted her nomination for the post of Sarpanch and her nomination was scrutinized by holding it as valid one. Likewise, another candidate was also filed her nomination for the said post. Therefore, conducting of election for the post of Sarpanch is inevitable and accordingly symbols were allotted to the contesting candidates.

It is also submitted that the respondents have made all arrangements for conducting free and fair poll.
On 06-08-2006, election was conducted in the peaceful atmosphere and the public exercised their franchise. At the evening of the day on which election was conducted
i.e. 06-08-2006, all the ballot boxes were pooled up to the counting hall. The counting staff opened the ballot boxes in the presence of counting agents and started counting.
After some time, the counting agents of the petitioner found that about 6 bundles of fake ballot papers were mixed up with the other

ballot bundles by the counting staff, more particularly M. Srinivasa Rao. When it is brought to the notice of the election officer, he questioned the said individual and he admitted that a mixed up two bundles, each bundle 50 ballot papers with a view to help the group of other contesting candidate Smt. S. Savitri.

It is also further stated that at that time, some of the miscreants/mischief mongers at the behest of the leaders of the party in power, entered into the hall. They created a panic situation in the counting room and smartly handed over the faked ballot paper bundles to the counting authorities, as per the plan already hatched by them.

Later they disappeared with the original ballot papers, separated by the counting authorities with suitable numbers. The individuals who entered the counting room unauthorisedly have taken out the ballot boxes containing ballot papers of the post of Sarpanch, as the ballot papers have been taken out by the individuals, the counting process has been stopped by the election authorities.

It is also further stated that about the illegal activities of M. Srinivasa Rao, counting staff, petitioner submitted her representation by narrating all the incidents occurred in the counting hall and sought for enquiry and requested the authorities to identify the fake ballot papers and to conduct re-polling for the post of Sarpanch. Though the respondents received the said representation, which records the facts and falsity taken place at the time of counting of votes, have not turned up with their remedial measure. It is relevant here to state that one of the polling staff and the counting authorities participated in the

process, viz., Masimukku Srinivasa Rao stated what is actually happened. Upon such, there is an exchange of words among the groups belong to the contesting candidates. He also endorsed the same on Rs.100/- bond paper. At that time, some of the miscreants entered into the place and taken away the ballot boxes. The police and revenue authorities, who were in duty of election, controlled the situation by informing the petitioner that they will bring it to the notice of respondent No.2, District Collector, who is the Election Authority at District level about the irregularities committed by the counting staff. Whereby, the authorities further promised that they will intimate the same to respondent No.1 for taking steps for re-polling.

It is also further stated that the said incidents were brought in the press on 07-08-2006. Due to the action of miscreants by taking away the ballot boxes, there is no scope for recounting of votes besides a chance for identifying the spurious ballot papers mixed with the original ballot papers. Hence, re-polling is inevitable for the purpose of protecting the democracy. The respondents have not taken away steps for conducting re-poll in the wake of the ballot boxes were carried away by the miscreants. As on the date, for the post of Sarpanch of Mulaupparagudem Gram Panchayat was not officially declared, due to the incidents stated above.

It is submitted that as the ballot papers were taken away by the unauthorized individuals before completion of counting process, the authorities have to conduct enquiry about the fake ballot papers mixed up with the original ballot papers. Hence, the writ petition.

In the counter affidavit filed by respondent No.3, it was stated that the State Election Commission issued election notification on 09-07-2006 for conduct of elections to the Gram Panchayats throughout the State of Andhra Pradesh. Pursuant to the above notification, the District Collectors of the State issued notification on 15-07-2006 notifying the Gram Panchayats. The Schedule mentioned in the notification issued by the State Election Commission is:

Receiving Nominations	: From 15-07-2006 to 19-07-2006 upto 5-00 PM
Scrutiny of Nominations	: 20-07-2006
Filing of Appeals	: 21-07-2006
Hearing and Disposal of Appeals	: 22-07-2006
Withdrawal of nominations and publication of validly contesting candidates	: 23-07-2006
Date of Polling for Malaupp-aragudem Gram Panchayat declaration of results	: 06-08-2006

It is also stated that respondent No.3 as Stage-II Returning Officer to Malaupparagudem Gram Panchayat, Kalidindi Mandal, Krishna District, states that after completion of the polling, the counting started after 2.00 PM and one Smt. Sarika Savitri is declared as elected to the post of Sarpanch of Malaupparagdudem Gram Panchayat with a majority of 43 votes against the writ petitioner. I obtained the signature from the elected candidate and

issued the certificate in Form No.29 declaring that Smt. Sarika Savitri was duly elected to the post of Sarpanch of Malaupparagudem Gram Panchayat, Kalidindi Mandal, Krishna District.

It is also further stated that the candidates and their agents left the counting hall and they were making arrangements to shift the election material to the Mandal Development Office. Thereafter, the writ petitioner and her husband along with 600 persons came to the counting hall and started shouting against the election staff. The entire election staff were scared and closed the doors. The followers of the writ petitioner broke open the windows and the doors with iron rods, stones and entered into the counting hall.

They started using unparliamentary language against the election staff and started beating the election staff indiscriminately. The police present near the counting hall fired two rounds in the air and in spite of the firing, the mob did not stop their activities and created terror situation and warned them that they will pour petrol on the election staff and burn them alive and further threatened them to give Form No.29 in favour of the writ petitioner. It is stated that respondent No.3 refused to give Form No.29 in spite of threatening. However, the followers of the writ petitioner started beating the election staff and were using

unparliamentary language and beating the woman teacher also who was on election duty. In such circumstances, the election staff left with no other option except to sign on the papers as demanded by the writ petitioner and their followers. This tense situation continued upto 12.00 O' clock in the midnight and at

around 12-15 AM in the night, the Additional Superintendent of Police came with police force and disbursed the mob and the police personnel took the election staff to the Mandal Development Office.

It is also stated that on the same day, respondent No.3 and other election staff issued complaints to the higher officials and also lodged a complaint in the Kalidindi Police Station and lodged FIR Nos.71 and 72 in the same Police Station. Pursuant to the complaint in FIR Nos.71 and 72,
a case was registered under Sections 147, 148, 188, 307, 353 and 354 read with Section 149 of Indian Penal Code.
It is also stated that respondent No.3 believed the same to be true, the police have identified more than 80 persons who were indulged in the unlawful activity that took place on
06-08-2006 in the counting hall of Malaupparagudem Gram Panchayat and the police are further investigating into the matter.

It is also stated that the writ petitioner and her husband Sri Naga Satyanarayana were also shown as accused in both the cases and the writ petitioner's husband was arrested by the police. It is also stated that the allegations and averments made in the writ petition are totally false and contrary to the record. The writ petitioner having lost the election by
43 votes, intentionally and willfully made those allegations against the respondents. The writ petitioner suppressed all these facts and filed the present writ petition and the writ petitioner had not approached the Court with clean hands.

Certain submissions, no doubt, were made.

When specific allegations are made relating to bribery, inasmuch as the same had not been specifically denied, in the facts and circumstances, respondent No.1 should have taken steps and should have ordered for conduct of re-poll. In the light of the respective stands taken by the parties and also in the light of the view expressed by this Court in

P. Jagadamba v. State Election Commission, Secunderabad[1], wherein this Court observed that normally in the matters of this nature, while ordering re-poll, the State Election Commission should be more careful and cautious, this Court is of the considered opinion that these aspects cannot be taken on record, at this stage, and hence without expressing any further opinion about the factual controversies, the Writ Petition is dismissed as being devoid of merit leaving option for the writ petitioner to pursue the other appropriate remedies available to her in law.

The Writ Petition is accordingly disposed of. No order as to costs.

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P. S. NARAYANA, J

Date:16-10-2006.

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[1] 2006(5) ALD 526